the solicitors for the plaintiff Messrs Amarjit Rubin & Partners.

Costs to the Plaintiff.

Order accordingly.

Solicitors: *Amarjit Rubin & Partners; Battenberg & Talma.*

BRITISH & MALAYAN TRUSTEES LTD. & ANOR. v. LIM BOON PIN & ORS.

[O.C.J. (Rajah J.) March 5, 1986]

[Singapore – Originating Summons No. 275 of 1984]

Trust and Trustees – Construction of testator's will – 15 shares in residuary trust funds – Death of legatee enjoying these shares – Question of devolution – Blood relation – Directions of court sought.

Probate and Administration – Will – Construction of – Directions of court sought.

In this originating summons, the plaintiffs, who are trustees of the Will of Lim Yew Teok (deceased), who died in Singapore on October 6, 1925, sought the directions of the court in the administration of the testator's estate under his Will dated August 22, 1925. The first defendant was the adopted son of the testator. The second defendant by the name of Lim Chui Ngor was the daughter of Lim Ah Kow, deceased, who was the natural son of the testator's daughter, Lim Chye Inn, but was described by the testator in the Will as "my infant grandson Lim Ah Kow the son of my deceased son Lim Geok Chai", who adopted Lim Ah Kow. The third defendant Lim Kee Suan was appointed by order of court to represent the class of persons interested as beneficiaries of the residuary trust funds under Clause 8 of the Will.

Under Clause 6 of the Will, the testator named a number of persons as his residuary legatees and the shares to which they were respectively entitled. The subject matter of this application concerns the 15 shares enjoyed by Chng Kiat Leng, who died a bachelor in 1983. These 15 shares formed a part of the 95 shares of income of the testator's residuary trust funds under Clause 6 of the Will. The principal issue for determination is whether the 15 shares enjoyed by Chng Kiat Leng (deceased) should pass on devolution to the first defendant Lim Boon Pin or Lim Chui Ngor (f).

Held: (1) the first defendant is neither a blood relation of Chng Kiat Leng nor is he a stirp or direct descendant of Lim Chye Inn (f). He therefore cannot succeed to the said 15 shares or any part thereof;

(2) on the death of the said Chng Kiat Leng, his 15 shares in the residuary trust fund of the testator passed to his niece Lim Chui Ngor.

Cases referred to:

(1) *British Malaya Trustee and Executor Co. Ltd. & Anor.* v. *Chan Mek Tuan & Ors.* [1937] M.L.J. 233.

(2) *Re Lim Yew Teok, Deceased; British Malaya Trustee and Executor Co. Ltd. & Anor.* v. *Chng Phee Lam & Ors.* [1948] M.L.J. 188.

(3) *Re Lim Yew Teok, Deceased; British Malaya Trustee Ltd.* v. *Chng Kiat Leng & Ors.* [1966] 2 M.L.J. 260, 262.

ORIGINATING SUMMONS.

S.H.D. Elias for the plaintiffs.

H.M. Dyne for the first defendant.

Eric Choa (*James Chia* with him) for the second defendant.

Tan Kok Quan for the third defendant.

Cur. Adv. Vult.

Rajah J.: This is an originating summons where the directions of the Court are being sought in the administration of a testator's estate.

The 1st plaintiffs are a trust company incorporated under the trust laws of Singapore and were appointed by the Court on January 15, 1937 in substitution for three of the original four surviving trustees of the will of Lim Yew Teok deceased. The 2nd plaintiff is a trustee of the said will appointed by the 1st plaintiffs under a Deed of Appointment dated October 22, 1984 in place of Chng Kiat Leng deceased jointly with themselves.

The 1st defendant, Lim Boon Pin, is an adopted son of the testator but is referred to by him in his will as his son. He is now the only surviving child of the testator (in the sense of that word in the will).

The 2nd defendant, Lim Chui Ngor, is the daughter of Lim Ah Kow deceased, who was the natural son of the Testator's daughter, Lim Chye Inn, but who had been given in adoption to the Testator's adopted son Lim Geok Chai deceased during the lifetime of the Testator and is described by the testator in Clause 6(4) of the will as "my infant grandson Lim Ah Kow the son of my deceased son Lim Geok Chai."

The 3rd defendant Lim Kee Suan was appointed under an Order of Court dated January 11, 1985 to represent the class of persons interested as beneficiaries of the residuary trust funds under Clause 8 of the will for the purpose of obtaining

the determination of the Court on the true construction of the said will on the questions posed in this Originating Summons.

Lim Yew Teok (the Testator) died testate in Singapore on October 6, 1925 leaving him surviving his only widow, Chan Mek Tuan, four adopted sons Lim Geok Chip, Lim Geok Hoh, Lim Choo Yian and Lim Boon Pin and his only natural married daughter Lim Chye Inn. By his will dated the August 22, 1925 (the will) he appointed the said Lim Geok Chip, Lim Choo Yian, Lim Boon Pin to whom he referred therein as his sons and his daughter Lim Chye Inn to be the executors and trustees of his will and probate thereof was granted to them on October 23, 1925.

A fifth adopted son Lim Geok Chai predeceased the testator but left him surviving his adopted son Lim Ah Kow who was the first born of the four of the natural born children of the said Lim Chye Inn.

The said Lim Chye Inn died, testate, on August 22, 1927, leaving her surviving her three children Chng Ah Dek, Chng Kim Soh (f) and Chng Kiat Leng and the said Lim Ah Kow whom she had given away in adoption to her adopted brother Lim Geok Chai during her father's lifetime. By her will dated September 2, 1926, which was an exhibit in the Originating Summons No. 56 of 1937 hereinafter mentioned she appointed her mother Chan Mek Tuan and "her brother" Lim Geok Chip to be the executors and trustees of her will and wherein she purported to deal with her 20 shares in her father's estate for the benefit of her four named children, namely the said Lim Ah Kow, Chng Ah Dek, Chng Kim Soh (f) and Chng Kiat Leng.

Lim Geok Hoh died in China on March 8, 1933 leaving him surviving two children.

By an Order of Court dated the 15th day of January 1937, made in Suit No. 500 of 1936 the 1st plaintiffs (then carrying the name of The British Malaya Trustee & Executor Company Limited) were appointed trustees of the testator's estate in substitution for the said Lim Geok Chip, Lim Choo Yian and Lim Boon Pin, the surviving proving executors and trustees.

Lim Choo Yian died in Singapore on March 29, 1953 leaving him surviving five children.

Lim Geok Chip died in Singapore on May 13, 1962 leaving him surviving five children.

The widow Chan Mek Tuan died in Singapore on the May 16, 1963.

Lim Boon Pin, the only survivor now of the five adopted children, is, as stated above, the 1st defendant in these proceedings.

From January 15, 1937, the 1st plaintiffs administered the estate of the deceased until January 15, 1961 when by Order of Court dated January 19, 1962 (O.S. No. 2 of 1962) Chng Kiat Leng, a son of the deceased trustee Lim Chye Inn, was appointed to act jointly with the plaintiffs in the trusts of the will.

By Clause 2 of the will the testator declared that the expression "date of distribution" wherever used in his will should mean the expiration of 21 years from and after the death of his last surviving child.

By Clause 3 of the will the testator gave and bequeathed to each of the children of his daughter the said Lim Chye Inn the sum of dollars ten thousand ($10,000/-) to be paid to him or her on attaining the age of 21 years but without interest in the meantime and he directed that if any such child shall have predeceased him leaving children such children shall take, and if more than one in equal shares, the share of his her or their parent.

By Clause 6 of the will the testator devised and bequeathed all the rest and residue of his movable and immovable property whatsoever and wheresoever situate unto his trustees upon trust to convert the same into money with power to postpone the sale calling in or conversion on the same and after payment of all his just debts and funeral and testamentary expenses to stand possessed of such money (designated as his "residuary trust funds") until the date of distribution defined in Clause 2 of the will and in the meantime (1) to expend out of the income thereof the monthly sum of $800/- for the upkeep of the family house No. 56-5 Neil Road and (2) to provide therefrom (a) for the maintenance of his lineal descendants choosing to live therein as set out in Clause 4 of the will and (b) for certain other expenses mentioned in Clause 6 of the will and thereafter to divide the balance of such income into 95 equal shares and to pay the same to the several legatees named therein (designated as his "residuary legatees") in the shares respectively given to them therein.

Under Clause 6 the testator named the following as his residuary legatees and the shares to which

they were respectively entitled:

(1) to his wife Chan Mek Tuan ten shares,
(2) to his son the said Lim Geok Chip fifteen shares,
(3) to his daughter the said Lim Chye Inn twenty shares,
(4) to his infant grandson Lim Ah Kow the son of his deceased son Lim Geok Chai ten shares, such part thereof as his trustees should think fit to be expended by them for the maintenance and education of the said Lim Ah Kow during his minority,
(5) to his nephew Lim Yew Teck the son of his deceased brother Lim Kim Khuan two shares,
(6) to his nephew Lim Hian Nan the son of his deceased brotherLim Kim Khuan two shares to be expended by his trustees for the maintenance and education of the said Lim Hian Nan during his minority,
(7) to each of his nephews Lim Geok Mauh and Lim Geok Gong the sons of his deceased brother Lim Sian Kak two shares,
(8) to his nephew Lim Geok Huan the son of his youngest brother Lim Chan two shares,
(9) to his son Lim Geok Hoh then in China two shares,
(10)to his son Lim Choo Yian fifteen shares,
(11)to his son Lim Boon Pin thirteen shares.

Clause 6 of the will further provided

"in the event of the death of any one or more of such legatee to the next of kin of such legatee or legatees so dead in accordance with the statutes of distribution and in the event of the death of any one or more of such next of kin as aforesaid then to the next of kin of such next of kin in accordance with the statutes of distribution and only in the event of the complete failure of the stirps of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue."

By clause 8 of the will the testator directed his trustees to stand possessed of the residuary trust funds at the date of distribution in trust for such of his residuary legatees as shall be living at the date of distribution and for the next of kin of such of his residuary legatees and their descendants per stirps as shall have died prior to the date of distribution in the shares or proportions which the residuary legatees or their respective next of kin were under the provisions in that behalf thereinbefore contained entitled to the income of his residuary trust funds immediately before such date.

The said Lim Chye Inn died on August 22, 1927 and on her death, her 20 shares of income in the testator's residuary trust funds given to her by Clause 6(3) of the will were divided by the then surviving three trustees of the will equally among the said Lim Ah Kow, Chng Ah Dek, Chng Kim Soh (f) and Chng Kiat Leng, the natural children of her marriage to Chng Phee Lam, on the basis of their being her next-of-kin.

As soon as the 1st plaintiffs had been appointed by the Court to be the trustees of the testator's estate they took out Originating Summons No. 56 of 1937 whereby the Court (per Terrell Acting C.J.), *inter alia* declared "that according to the true construction of the will of the Testator the expression 'child' in Clause 2 of the said will of Lim Yew Teok, deceased, includes his adopted sons" and the court further declared "that according to the true construction of Clause 6 of the said will the expressions "in the event of the death" means "at the death" at any time before the period of distribution, and in interpreting the meaning of "next of kin" husbands and wives of beneficiaries must be excluded.[1]

On these questions the learned Acting Chief Justice had this to say at page 234:

"From this clause (meaning clause 8) it is quite clear that the testator contemplated that certain persons would be in enjoyment of the income under clause 6 and that these same persons would be entitled to the corpus at the date of distribution in the same proportions as they were entitled to the income immediately before the date of distribution.

In Clause 8 the Testator speaks of the residuary legatees and the next of kin of such residuary legatees/and their descendants per stirps) as shall have died prior to the date of distribution. Accordingly in clause 8 he clearly contemplates successive interests in the income. If, however the strict rule is applied to clause 6 there will be no successive interests, and the estates of deceased legatees would be enjoying the income until the date of distribution. But under clause 8 a different set of persons would be entitled to the corpus. The result therefore would be opposed to the clear intention expressed in clause 8, that the beneficiaries entitled to the corpus must be the same persons who were enjoying the income immediately before distribution.

I find accordingly that on the construction of clause 6 the expression 'in the event of the death' means 'at the death' at any time before the period of distribution.

In interpreting the meaning of 'next of kin' husbands and wives of beneficiaries must be excluded."

On the authority of this judgment, which was that the estate of residuary legatees took no vested interest in the shares enjoyed by them but that there were to be successive interests in the shares in favour of the next of kin of dying legatees, the 1st plaintiffs continued to treat the four children of Lim Chye Inn deceased as they had in fact been treated by the previous trustees, that is as her only next of kin.

The said Chng Kim Soh (f) died on October 18, 1941, some few months before the Second World War came to Singapore, not having married.

In Originating Summons No. 61 of 1947, on the application of the 1st plaintiffs the Court (per

Brown J.) on March 15, 1948 ordered and declared:

(1) that upon the true construction of the will the share of income enjoyed by Chng Kim Soh (f) passed upon her death to her father Chng Phee Lam, and

(2) that the trustees of the will were to be at liberty to satisfy the legacy of $10,000/- bequeathed by Clause 3 of the will to Chng Kim Soh (f) as daughter of Lim Chye Inn by paying the said sum of $10,000/- to the legal personal representative of Chng Kim Soh (f).

In view of (2) I must assume that the said Lim Ah Kow was also paid by the Trustees the legacy of $10,000/- as he had in O.S. 56 of 1937 (per Terrell Acting C.J.) been treated as one of the four next of kin of the said Lim Chye Inn in the matter of the succession to her twenty shares in the residuary trust fund.

Lim Ah Kow died on September 19, 1953 leaving surviving him his only child Lim Chui Ngor (f), the 2nd Defendant. Presumably his ten shares as residuary legatee under Clause 6(4) of the will and the five shares derived from his natural mother the said Lim Chye Inn (approved of in O.S. 56 of 1937 per Terrell acting C.J.) went to the said Lim Chui Ngor (f) as his only child.

Chng Ah Dek, one of the four children of the said Lim Chye Inn, died on January 3, 1955 not having married and the trustees relying on the Order of Court dated March 15, 1948 in O.S. 61 of 1947 (per Brown J.) allocated the share of income which had been enjoyed by him to his father Chng Phee Lam.

After about seven years from the death of his wife Lim Chye Inn, Chng Phee Lam married one Ong Wei Kim. He died on January 5, 1957 leaving him surviving Chng Kiat Leng his only surviving child by his first wife Lim Chye Inn, and another four children by his second wife Ong Wei Kim namely Chng Heng Tat, Chng Heng Choo, Chng Heng Tee, Chng Heng Liew.

In Originating Summons No. 112 of 1965 the Court (per Ambrose J.) on the application of the trustees held that, upon the true construction of the will and in the events which had happened the shares of income of Chng Kim Soh (f) and Chng Ah Dek which had passed upon their respective deaths to Chng Phee Lam passed upon the death of the said Chng Phee Lam to Chng Kiat Leng, his son by his first wife Lim Chye Inn and Lim Chui Ngor, the natural daughter of Lim Ah Kow by his marriage to Koh Teck Lay equally to the exclusion of the said Chng Heng Tat, Chng Heng Choo, Chng Heng Tee and Chng Heng Liew as they were not of the stirps of Lim Chye Inn.

The testator's widow Chan Mek Tuan died on May 16, 1963. On her death the then trustees namely the 1st plaintiffs and Chng Kiat Leng allocated the ten out of 95 shares of income of the residuary trust funds enjoyed by her under Clause 6(1) of the will equally between the said Chng Kiat Leng and the said Lim Chui Ngor, the only child of Lim Ah Kow, the 2nd defendant, as they considered them to be "the only surviving issue of her only child Lim Chye Inn."

Chng Kiat Leng died on March 30, 1983, a bachelor. Immediately prior to his death he was in enjoyment of 15 of the 95 shares of income of the testator's residuary trust funds under Clause 6 of the will, made up as follows:-

(a) 5 shares derived from the 10 shares given to the testator's wife Chan Mek Tuan by Clause 6(1) of the will;

(b) 10 shares derived from the 20 shares given to the testator's daughter Lim Chye Inn under Clause 6(3) of the will.

In these circumstances the trustees (1st and 2nd plaintiffs) now seek the determination of the court on the question whether, upon the true construction of the testator's will and in the events which have happened, the 15 shares of income of the testator's residuary trust funds under the trusts of clause 6 of the testator's will enjoyed by Chng Kiat Leng deceased prior to his death on March 30, 1983 comprising –

– 5 shares derived from the 10 shares given to the testator's wife Chan Mek Tuan by clause 6(1) of the testator's will, and

– 10 shares derived from the 20 shares given to the testator's daughter Lim Chye Inn by clause 6(3) of the testator's will,

devolve on the death of the said Chng Kiat Leng:

a) as to all the said 15 shares, to the 1st defendant the only surviving adopted son of the testator solely, or

b) as to all the said 15 shares, to the 2nd defendant the grand daughter of Lim Chye Inn solely, or

c) as to the 5 shares derived from Chan Mek Tuan's 10 shares to the 1st defendant solely and as to the 10 shares derived from Lim Chye Inn's 20 shares to the 2nd defendant solely, or

d) to other beneficiaries under the testator's will and, if so, to whom and in what proportions; or

e) into residue and, if so, how such income should be applied until the date of distribution defined in clause 2 of the testator's will.

Chan Mek Tuan's 10 shares under clause 6(1) of the will

On the question of the devolution of Chan Mek Tuan's ten shares in the income of the residuary trust funds Mr. Dyne for the 1st defendant says that this question has not been specifically decided by any of the three Courts or any other. Court. He invites me therefore to go into the question of the allocation by the 1st plaintiffs and Chng Kiat Leng, the then trustees, of the said ten shares equally between Chng Kiat Leng and Lim Chui Ngor (f) and say that such allocation is not in accordance with a true construction of the will. He urges me that as, for the purposes of the will the five adopted sons of the testator have been treated by the court (per Terrell Acting C.J. in O.S. 56 of 1937) as if they were natural sons of the testator, I, for purpose of this application, should look upon the said five adopted sons, having regard more particularly to the testator's family arrangements, as the adopted sons of the Testator's wife Chan Mek Tuan. Having brought myself to regard them as her adopted children he urges me then to take one step further and say that for the purpose of succession to her 10 shares I should treat them as if they were her natural born children that is to say her next of kin. But is this question I ask myself still an open one, as Mr. Dyne suggests, and is it one to which the courts in the three Originating Summonses have not addressed their minds in one way or another.

In O.S. 56 of 1937 wherein the provisions of clause 6 of the will of the deceased read with the will of Lim Chye Inn came up for determination, Terrell Acting C.J. decided, *inter alia,* that, on the true interpretation of the will of the testator :-

(1) that the 20 shares of Lim Chye Inn did not pass to her estate under her will;

(2) that the children of Lim Chye Inn were to take the said shares by way of succession as her next of kin under clause 6 of the will of the testator; and

(3) that her husband Chng Phee Lam could not succeed to any part of her 20 shares under clause 6 of the will of the testator.

There is no statement in the judgment of Terrell Acting Chief Justice that Lim Ah Kow was to be treated as of the family of Lim Geok Chai even though the will categorically states that Lim Ah Kow is the son of Lim Geok Chai – see Clause 6(4). On page 235 (r.h.c.) at para 4 he refers to Lim Ah Kow as the eldest son of Lim Chye Inn and implicit in his decision is that Lim Ah Kow was not part of the family of Lim Geok Chai and that for the purpose of succeeding to Lim Chye Inn's 20 shares under clause 6 he had never ceased to be her child and her next of kin.

Further it is interesting to note that in O.S. 61 of 1947 the trustees in their Affidavit filed on July 4, 1947 (Encl. 2) deposed, *inter alia,* as follows:

"(4) The residuary legatee Lim Chye Inn the third of the residuary legatees mentioned in clause 6 of the Testator's Will died on 22nd of August 1927 leaving a husband and *four children.* (Emphasis mine).

(5) According to the Judgment of Mr. Justice Terrell given in Originating Summons No. 56 of 1937 intituled "In the matter of the trusts of said Will of the Testator" between the Plaintiffs herein and Chan Mek Tuan and others as Defendants and dated 27th day of July 1937, *upon the death of the said Lim Chye Inn the twenty shares bequeathed to her as a residuary legatee by the Testator's said Will passed to her children to the exclusion of her husband."* (Emphasis mine).

In O.S. No 61 of 1947 in which (1) Chng Phee Lam (2) Lim Ah Kow (3) Chan Mek Tuan and (4) R H Green substituted by Order of Court dated November 16, 1947 were the 1st, 2nd, 3rd and 4th defendants respectively, Brown J.[2] had this to say "The first question which I am asked to determine is whether upon the true construction of the Will the share of income enjoyed therein by Chng Kim Soh (f) passed upon her death to (1) her father, the 1st defendant or (2) her brothers, or (3) falls into residue, or (4) falls to be decided as on an intestacy" (page 188). After dealing with various arguments raised by various counsel on this

question he went to say (page 189 second column) :

"But as clause 6 of the Will directs that upon the death of Chng Kim Soh the income is to be paid 'in accordance with the statutes of distribution,' it seems to me that to pay the income to any person or persons other than the father would be doing violence to a clear and unambiguous direction. In coming to this conclusion I have given consideration to the further words in Clause 6, that 'only in the event of complete failure of the stirps of any one or more of my residuary legatees shall the shares of such original residuary legatee or legatees fall into residue.' But it does not seem to me that those words would justify me in qualifying the express words whereby the income is to be paid to Chng Kim Soh's next of kin 'in accordance with the statutes of distribution.' The 'stirps' referred to is to my mind clearly the descendants by blood of Lim Chye Inn. There has been no failure of the 'stirps' because three of Lim Chye Inn's sons (the brothers of Chng Soh Kim) are still alive. Therefore there can be no question of Chng Soh Kim's share falling into residue. Nor can there be any question of an intestacy, because there are several persons who are qualified as Chng Kim Soh's next of kin. But, out of the persons so qualified, the selection of the person entitled is determined by the words 'in accordance with the statutes of distribution.'

In my opinion, therefore, the answer to the first question is that the share of income enjoyed in the Will by Chng Kim Soh passed upon her death to her father, the 1st defendant. I may add that it seems to me that if the father should die before the date of distribution further questions will arise regarding the distribution of the corpus."

And true enough when the father of Chng Phee Lam died before the date of distribution the further question as envisaged by Brown J. was in fact taken up by the trustees in O.S. No. 112 of 1965.

To my mind it seems fairly clear that Brown J. had addressed his mind to the question of whether Lim Ah Kow was of the family of his natural mother or his adoptive father. It was on the basis that Lim Ah Kow was of the family and of the next of kin of his natural mother that the 20 shares of Lim Chye Inn had gone equally to her four children, namely Lim Ah Kow, Chng Ah Dek, Chng Kim Soh (f) and Chng Kiat Leng, on her death (O.S. 56 of 1937). And it was on this basis that Brown J. himself dealt with the five shares that had devolved on Chng Kim Soh (f) on her mother's death.

In O.S. 112 of 1965 Ambrose J. decided that upon the true construction of the will and in the events which had happened the shares of income of Chng Kim Soh (f) and Chng Ah Dek, the children of Lim Chye Inn, which had passed upon each of their deaths to their father Chng Phee Lam passed upon the father's death to Chng Kiat Leng, his last surviving son, and Lim Chui Ngor, the only child of Lim Ah Kow, one of the natural children of Lim Chye Inn, to the exclusion of the father's four children by his second marriage. Implicit in this decision is, that although Lim Ah Kow had been adopted by Lim Geok Chye and had taken on the surname of Lim in place of the surname Chng he was for purposes of succession to the legatee Lim Chye Inn under clause 6 of the will still considered to be part of the family of Lim Chye Inn and one of her next of kin and not the next of kin of his adopted father Lim Geok Chai. It would appear from the decisions of Terrell Acting C.J. and Ambrose J. that questions of succession to the shares of residuary legatees under Clause 6 of the will had to be determined on the basis of blood relationship, that is to say as if the legatee had died intestate and the Statute of Distribution had to be applied. The court came to this conclusion even though the testator in his will had given ten shares to use his own words "to my grand son Lim Ah Kow, the son of my deceased son Lim Geok Chai." In the face of these decisions by Terrell Acting C.J. and Ambrose J. which took into account the problem of adopted sons in the ascertainment of next of kin and which have not been appealed against, I cannot see how I can accede to Mr. Dyne's suggestion that I should now treat the adopted children of the testator as the adopted children of the widow and consequent on that as her natural children on the basis that this is still an open question on which I could pronounce. On a reading of the three judgments it would appear that the adopted children of the testator were to be treated as the natural children of the deceased only for purposes of determining the date of distribution and not for purposes of determining succession under Clauses 6 and 8 of the will. The four adopted children of the testator who were alive on the date of his death shared in his estate not because they were adopted children but because they had been named specific legatees under his will. In other words if the testator had died intestate only his widow Chan Mek Tuan and his daughter Lim Chye Inn would have inherited his estate. On a reading of the three judgments, more particularly those of Terrell Acting C.J. and Ambrose J., I am of the view that for purposes of succession, under Clause 6 of the will to the ten shares of the widow, neither the 1st defendant nor any other adopted son of the testator is to be treated as her next of kin.

And moreover in O.S. No. 112 of 1965 Ambrose J. in his Judgment[3] for purposes of succession under clause 6 of the will specifically refers to

Lim Chui Ngor, the daughter of Lim Ah Kow, as the granddaughter of Lim Chye Inn and to Lim Ah Kow as the son of Lim Chye Inn. I agree with Ambrose J.

In the course of his submission to the Court Mr. S.H.D. Elias says that "it does not appear from the said judgments that any question was raised or considered as to whether the fact that Lim Ah Kow had been adopted by Lim Geok Chai and was described in the will as Lim Geok Chai's son affected the kin relationship of Lim Ah Kow to Lim Chye Inn for the purposes of devolution of interests under the will." I agree that this question was not specifically put in so many words to the Courts in the three Originating Summonses. But the fact that Lim Ah Kow had been adopted was before all the three judges. Terrell Acting C.J. held that the 20 shares went to the children of Lim Chye Inn. On this basis 5 shares went to each of the four children. Brown J. dealt with the 5 shares of Chng Kim Soh (f) and not the 20/3 shares which would have been her share had Lim Ah Kow been excluded and had the 20 shares been divided equally between the other three of the children. In my view Brown J. was fully aware that the 20 shares had been divided equally between the four children. Again Ambrose J. in my view was fully aware that in the first instance the 20 shares of Lim Chye Inn was divided amongst her four children equally for he was called upon to pronounce on the 10 shares which had devolved on Chng Phee Lam through his two children, Chng Kim Soh (f) and Chng Ah Dek. This being so, I do not believe that at this stage of the administration of the Estate which has been largely based on judicial decisions, I have any choice but to say that the 15 of 95 shares allocated to Chng Kiat Leng were properly allocated under Clause 6 of the will.

Coming back to the questions raised in this Summons I agree with the submission of Mr. Eric Choa, counsel for the 2nd defendant. I hold that Lim Boon Pin (1st defendant) is neither a blood relation of Chng Kiat Leng nor is he a stirp or direct descendant of Lim Chye Inn (f). He therefore cannot succeed to the said 15 shares or any part thereof. I hold that Lim Chui Ngor (f) is clearly a blood relation of Chng Kiat Leng (being the daughter of Chng Kiat Leng's real brother Lim Ah Kow and at the same time a lineal descendant (a stirp) of Lim Chye Inn, the original legatee).

I therefore declare that in the events that have happened and on the death of the said Chng Kiat Leng, his 15 shares in the residuary trust fund of the testator passed to his niece Lim Chui Ngor (f). And in so declaring I am comforted that Mr. S.H. D. Elias, counsel for the trustees, does not disagree with me.

And last, but not least, I am obliged to all four counsel for their useful written submissions.

Court: On question of costs, costs of all parties to be taxed as between solicitor and client and paid out of the income accumulated or otherwise related to the 15 shares adjudicated upon by this Summons. No part of the corpus is to be utilised for the payment without reference to court. Liberty to apply.

Order accordingly.

Solicitors : *Allen & Gledhill; Donaldson & Burkinshaw; S.T. Kay & Co.; Lee & Lee.*

CLEMCO INTERNATIONAL SALES CO. v. ROSEMARK LTD. & ANOR.

[O.C.J. (Rajah J.) April 3, 1986]
[Singapore – Suit No. 3742 of 1980]

Contract Law – Management Agreement between main company and first defendant – Employment Agreement between main company and second defendant – Terms of payment – Transfer of funds by second defendant – Dispute – Claim by plaintiffs – Counterclaims by both defendants.

The plaintiff company ("the Branch Company") is the registered branch in Singapore of an American company incorporated in the State of Nevada but with headquarters in California ("the Main Company"). The Branch Company was engaged in selling and servicing in South East Asia and elsewhere the machinery and equipment manufactured by its parent company in the United States. The Main Company is a subsidiary of Clemco International Incorporated, an American company incorporated in the State of Delaware. The first defendant ("Rosemark") is a Hong Kong company. The second defendant ("Hawkins") was recruited in Singapore into the service of the Main Company under an Employment Agreement dated December 15, 1975, for a period of one year. His employment was not terminated prior to its expiration on January 15, 1978, and his employment continued on a month to month basis on agreed monthly salary, with bonus to be approved or determined by the Board of the Main Company. On January 1, 1979, Rosemark entered into a management agreement whereby the Main Company engaged Rosemark as an independent contractor to provide, on payment of agreed sums, management and administrative services for the Branch Company.